

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Service Rules for the Advanced Wireless)	WT Docket No. 12-357
Services H Block—Implementing Section)	
6401 of the Middle Class Tax Relief and Job)	
Creating Act of 2012 Related to the 1915-1920)	
MHz and 1995-2000 MHz Bands)	

COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION

Steven K. Berry
Rebecca Murphy Thompson
COMPETITIVE CARRIERS ASSOCIATION
805 15th Street NW, Suite 401
Washington, DC 20005

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I. INTRODUCTION AND SUMMARY

Competitive Carriers Association (“CCA”) submits these comments in response to the Notice of Proposed Rulemaking (“Notice”) in the above-captioned proceeding, in which the Commission has proposed to make ten megahertz of spectrum between 1915-1920 MHz and 1995-2000 MHz (the “H Block”) available for flexible use.¹ As an association of more than 100 competitive wireless carriers who are fervently seeking access to available 4G spectrum, CCA has a strong interest in the Commission’s efforts to expand the amount of wireless spectrum available for flexible use in the United States.

Consistent with its participation in the pending incentive auction proceeding,² CCA offers these comments to encourage the development of a regulatory framework that maximizes the amount of licensed spectrum available to meet surging demand in mobile services, promotes competition for wireless services, and spurs innovation in the marketplace for mobile services. As

¹ Service Rules for the Advanced Wireless Services H Block—Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915-1920 MHz and 1995-2000 MHz Bands, WT Docket No. 12-357, *Notice of Proposed Rulemaking*, FCC 12-152 (rel. Dec. 17, 2012) (“*Notice*”).

² See Comments of Competitive Carriers Association, Docket No. 12-268 (filed Jan. 25, 2013) (“CCA Incentive Auction Comments”).

the Commission recognized in the *Notice*, “[w]ireless broadband is a key component of economic growth, job creation and global competitiveness because consumers are increasingly using wireless broadband services to assist them in their everyday lives.”³ As demand for wireless services grows, so too does the imperative for carriers to increase their network capacities.⁴

Specifically, CCA urges the Commission to: (i) ensure that the H Block rules are consistent with the requirements of the Spectrum Act; (ii) adopt services rules for the H Block that generally accord with the Commission’s Part 27 rules; (iii) revise its current spectrum screen to foster competition at auction; (iv) license the H Block for exclusive geographic use through competitive bidding; (v) accord H Block licensees flexibility in determining their regulatory status; (vi) create a ten-year license term for H Block licenses; (vii) establish strong build-out requirements that prevent warehousing but reasonably account for unforeseeable technical impediments; (viii) permit partitioning, disaggregation, and leasing of H Block spectrum; and (ix) develop a cost reimbursement scheme among licenses in the 1915-1920 MHz band that is both fair and consistent with precedent.

II. THE H BLOCK RULES SHOULD SATISFY THE REQUIREMENTS OF THE SPECTRUM ACT

A. The Commission Need Not Take Any Further Action to Allocate the H Block for Commercial Use

The Commission correctly concludes that the existing H Block allocation, which the Commission previously designated for non-federal fixed and mobile use on a primary basis, meets the legislative requirement that the Commission allocate the spectrum for commercial use.⁵ As explained in the *Notice*, the Commission has already allocated the H Block spectrum for non-

³ *Notice* ¶ 9.

⁴ *Id.*

⁵ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6401(b)(1)(A), 125 Stat. 156 (2012) (“*Spectrum Act*”).

federal, fixed and mobile use on a primary basis.⁶ Accordingly, the Commission need not take further action to allocate the H Block for commercial use pursuant to the terms of the Spectrum Act.

B. Licensing the H Block Spectrum for Flexible Use Would Promote Competition, Innovation, and Spectrum Efficiency

One of the principal means by which the Commission can harness the full value of the H Block is by licensing that spectrum under flexible use service rules, subject to the rules of general applicability to which Part 27 licensees are bound.⁷ Permitting licensees to use the H Block spectrum for any non-federal use permitted under the U.S. Table of Frequency Allocations would not only give effect to the legislative mandate of the Spectrum Act to license the H Block “subject to flexible-use service rules,”⁸ but also remain consistent with prior Commission and Congressional actions that promote flexible spectrum allocations. As the Commission has noted, flexible use rules and policies for spectrum assignments have proven central to “increas[ing] communications capacity and efficiency of spectrum use” and allowing wireless licensees to use their spectrum “in ways that respond quickly and effectively to evolving needs (*e.g.*, consumer

⁶ Notice ¶ 14 & n.19 (citing 47 C.F.R. § 2.106; Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, ET Docket No. 00-258, *Third Report and Order, Third Notice of Proposed Rulemaking and Second Memorandum Opinion and Order*, 18 FCC Rcd 2223, 2225 ¶ 3 (2003); Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00-258, *Sixth Report and Order, Third Memorandum Opinion and Order and Fifth Memorandum Opinion and Order*, 19 FCC Rcd 20720, 20723 ¶ 3 (2004) (“AWS Sixth Report & Order”).

⁷ Notice ¶ 16 (citing 47 C.F.R. §§ 2.106, 27.3).

⁸ Spectrum Act § 6401(b)(1)(B).

demands), technologies (*e.g.*, access-enhancing or efficiency-improving innovations), and market developments.”⁹

Since Congress amended the Communications Act in 1999, the Commission has viewed its authority to license spectrum for flexible use “as a critical means of ensuring that spectrum is put to its most beneficial use.”¹⁰ Flexible-use policies have allowed licensees in other bands an opportunity to innovate and rapidly respond to changing consumer demands for wireless services. Applying flexible use policies to the H Block will encourage the similarly timely deployment of innovative commercial wireless services to the public.

C. A Competitive Auction Would Increase the Value and Utility of the H Block

If properly structured, competitive bidding can quickly assign spectrum licenses to individuals most likely to use them. As the Commission has consistently noted, “the competitive bidding mechanism is most likely to select licensees that value the spectrum the most and will put it to its highest and most efficient use.”¹¹ Through its competitive bidding measures and Section 309(j) of the Act, the Commission has been able to promote license ownership among small

⁹ Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, WT Docket No. 00-230, *Report and Order and Further Notice of Proposed Rulemaking*, DA 03-3780 ¶ 57 (rel. Oct. 6, 2003) (“*Secondary Markets R&O*”).

¹⁰ Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353, *Notice of Proposed Rulemaking*, FCC 02-305 ¶ 10 (rel. Nov. 22, 2002).

¹¹ Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands, WT Docket No. 12-70, *Report and Order and Order of Proposed Modification*, FCC 12-151 ¶ 209 (rel. Dec. 17, 2012) (“*AWS-4 Order*”); *see also* Amendment of Parts 1 and 22 of the Commission’s Rules With Regard to the Cellular Service, Including Changes in Licensing of Unserved Area, WT Docket No. 12-40, *Notice of Proposed Rulemaking and Order*, FCC 12-20 ¶ 22 (rel. Feb. 15, 2013) (“[C]ompetitive bidding places licenses in the hands of those that value the spectrum most highly.”); Barry P. Lunderville, College Creek Broadcasting, Inc., and Cumulus Licensing LLC Petition for Reconsideration, *Memorandum Opinion and Order*, FCC 13-7 ¶ 22 (rel. Jan. 14, 2013) (“An auction with consistently revealed price information is the best mechanism to determine the parties that most value the spectrum.”).

businesses, rural telephone companies and minority- and women-owned businesses.¹² As with many other commercial spectrum assignments (and assuming there are mutually exclusive applications), licensing the H Block spectrum through competitive bidding would help to swiftly license the spectrum in a transparent manner to the companies most likely to use the resource for the greatest benefit of the public.¹³

III. THE H BLOCK LICENSING RULES SHOULD PROMOTE FLEXIBILITY AND COMPETITION

A. Licensees and Applicants for H Block Spectrum Should Not Be Required to Specify Their Regulatory Status

In light of the substantial public interest benefits of flexible spectrum use, H Block licensees should not be required to choose between providing common carrier and non-common carrier services.¹⁴ Nor should licensees be required to describe the services they intend to provide prior to obtaining a license. As the Commission explained in the Notice, the Part 27 rules permit applicants that wish to provide both common carrier and non-common carrier services under a single license to request status as both a common carrier and a non-common carrier.¹⁵ A similar rule that permits H Block licensees “to provide all allowable services throughout their licensed area at any time, consistent with their regulatory status,”¹⁶ would empower carriers to roll-out a variety of wireless services in their licensed markets. Additionally, it would reduce the attendant administrative burdens of authorizing different uses of the spectrum. Licensees would have no need to seek administrative updates to their license holdings to provide services that are clearly

¹² See 47 U.S.C. § 309(j); Commission Opens Inquiry on Competitive Bidding Process for Report to Congress, WT Docket No. 97-150, *Public Notice*, FCC 97-232 (rel. July 2, 1997).

¹³ *Spectrum Act* § 6401(b).

¹⁴ *Notice* ¶¶ 70-71.

¹⁵ See 47 C.F.R. § 27.10.

¹⁶ *Notice* ¶ 70.

authorized by the H Block rules, and the Commission would have no need to process those licensee requests. This rule has played a critical role in the development of Part 27 services, and would have a similar streamlining effect on the deployment of valuable service in the H Block.

B. The Eligibility and Spectrum Holding Policies for the H Block Should Promote Competition and Reduce the Risk of Excessive Spectrum Concentration

As recognized in the *Notice*, the Commission's mobile spectrum holdings policies, as applied to both auctions and transactions, are currently subject to review in a pending proceeding.¹⁷ Consistent with its submissions in that docket, CCA urges the Commission to revise its current spectrum screen so as to apply one trigger for a carrier's spectrum holdings below 1 GHz in a particular market area, a separate trigger for a carrier's aggregate spectrum holdings in that market area (both above and below 1 GHz), and then a third trigger for a carrier's national spectrum holdings.¹⁸ This approach would protect against competitive harms arising from the aggregation of spectrum in the hands of the largest carriers, and CCA once again encourages the Commission to take prompt action to adopt CCA's recommendations in that proceeding.

Furthermore, in addition to assessing the amount of H Block spectrum a single carrier may acquire in this proceeding, the Commission can evaluate the carrier's aggregate spectrum holdings in each local market. Proactive, rather than reactive, efforts to minimize the risk of excessive spectrum consolidation would not only promote diversity among spectrum licensees, but also spur competition and improve consumer choice. Either way, to promote greater certainty, CCA

¹⁷ *Id.* ¶ 76 (citing Policies Regarding Mobile Spectrum Holdings, WT Docket No. 12-269, *Notice of Proposed Rulemaking*, FCC 12-119 (rel. Sept. 28, 2012)).

¹⁸ *See generally* Comments of Competitive Carriers Association, WT Docket No. 12-269 (filed Nov. 28, 2012); CCA Incentive Auction Comments at 12.

encourages Chairman Genachowski to complete the Mobile Spectrum Holdings proceeding prior to issuing H Block rules.¹⁹

The PCS H Block spectrum has substantial value for mobile broadband applications, especially if licensed for flexible use, as proposed by the Commission. Accordingly, the Commission should consider adopting measures to prevent the nation's dominant carriers from acquiring the lion's share of the H Block spectrum, including bidding credits for small businesses.

C. A Ten-Year Term for H Block Licenses with Reasonable Build-Out Requirements Would Promote Prompt and Efficient Service Deployment

Establishing a term of ten years for H Block licenses, as the Commission has proposed,²⁰ allows sufficient time to plan and deploy services in the licensed spectrum while still allowing for timely review of licensee performance. As reflected in the Notice, moreover, a ten-year term would maintain consistency with similar wireless services for which the Commission has adopted ten-year license terms, including Part 24 PCS licenses²¹ and Part 27 WCS licenses.²² Adopting the same, ten-year term for H Block strikes the right balance between creating investment incentives and ensuring timely deployment and sufficient regulatory oversight.

CCA also agrees that strong build-out requirements should apply to the H Block licenses to prevent aggregation or spectrum warehousing. CCA, therefore, supports the Commission's proposal to adopt build-out requirements according to the percentage of population served within

¹⁹ The Chairman has previously testified to his intent to complete the Mobile Spectrum Holdings proceeding prior to the upcoming broadcast spectrum incentive auction. *See Keeping the New Broadband Spectrum Law on Track: Hearing Before the Subcomm. on Communications and Tech. of the H. Comm. on Energy & Commerce*, 112th Cong. 67 (2012) (testimony of Hon. Julius Genachowski, Chairman, Federal Communications Commission), *preliminary transcript available at* <http://democrats.energycommerce.house.gov/sites/default/files/documents/Transcript-Broadband-Spectrum-Law-2012-12-12.pdf>.

²⁰ Notice ¶ 78.

²¹ 47 C.F.R. § 24.15.

²² *Id.* § 27.13(a).

the license area.²³ However, the Commission should also consider using geographic build-out requirements in less dense areas to ensure that carriers do not leave rural consumers behind. Geography-based construction milestones could better incentivize carriers to build-out facilities in unserved areas where fewer consumers live and where demand for wireless services has not been fully met.

D. Permitting the Partitioning, Disaggregation, and Leasing of the H Block Would Promote Flexibility and Efficient Spectrum Use

Finally, the Commission can foster the development of a robust secondary market for H Block spectrum in two ways. First, allowing licensees to partition and disaggregate their H Block holdings, as generally permitted by the Part 27 rules,²⁴ would empower licensees to respond to market demand following the auction, which would spur competition for spectrum-based services and foster wireless innovation.²⁵ As the Commission has acknowledged, “[p]artitioning and disaggregation promote the efficient use of spectrum and increase competition,” and “expedite the provision of service to rural and other underserved areas of America as well as to niche markets.”²⁶ These “secondary market tools”²⁷ can hasten the emergence of wireless services that might not otherwise develop in the absence of a licensee’s right to partition and/or disaggregate its spectrum. Similarly, Senators Klobuchar and Snowe acknowledged in the 112th Congress, through introduction of the Rural Spectrum Accessibility Act of 2012, that supporting

²³ Notice ¶ 81.

²⁴ Notice ¶¶ 94-95.

²⁵ *Id.* ¶ 94; *see also* Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Docket No. 12-268, *Notice of Proposed Rulemaking*, FCC 12-118 ¶ 385 (rel. Oct. 2, 2012) (“*Incentive Auctions NPRM*”).

²⁶ *AWS-4 Order* ¶ 248.

²⁷ *Id.*

disaggregation and partitioning of spectrum helps “encourage spectrum licensees to make unused spectrum available for use by rural and smaller carriers in order to expand wireless coverage.”²⁸

Second, applying the current spectrum leasing rules and policies, as they apply to other Part 27 services, would further enhance the use and value of the H Block.²⁹ In 2003, the Commission adopted its spectrum leasing framework “to promote more efficient, innovative, and dynamic use of the terrestrial spectrum, expand the scope of available wireless services and devices, enhance economic opportunities for accessing spectrum, and promote competition among terrestrial wireless service providers.”³⁰ In light of those benefits, the Commission has applied the spectrum leasing rules and policies to other spectrum bands used for commercial services.³¹ Extending the leasing provisions in this proceeding would likewise yield more efficient and dynamic use of the H Block spectrum by a diversity of parties.

IV. THE COMMISSION’S PROPOSED BLOCK CONFIGURATION AND SERVICE AREA RULES WOULD SERVE THE PUBLIC INTEREST

A. Licensing the H Block in Paired, Five Megahertz Blocks Would Foster Innovation and Facilitate Deployment

As the Commission has already concluded, pairing the lower and upper portions of the H Block would promote the efficient use of that spectrum and allow for the proliferation of high-value wireless services.³² Specifically, licensing the H Block in a paired manner – with base station operations permitted in the Upper H Block and mobile and low power fixed operations in the Lower H Block – would yield two clear benefits. First, paired, five megahertz H Block licenses would foster the development of innovative two-way services and allow licensees to bond

²⁸ Rural Spectrum Accessibility Act of 2012, S. 3516, 112th Cong. (2012).

²⁹ Notice ¶ 98 (citing 47 C.F.R. § 1.9005(j)).

³⁰ AWS-4 Order ¶ 254 (citing *Secondary Markets R&O* ¶ 2).

³¹ See, e.g., AWS-4 Order ¶ 257.

³² Notice ¶ 23 (citing *AWS Sixth Report & Order* ¶ 41).

multiple channels together for enhanced performance of advanced mobile broadband services (such as LTE).³³ Second, offering paired spectrum will promote competition by enabling such carriers to deploy new and expanded services quickly and efficiently.³⁴ For these reasons, pairing the upper and lower portions of the H Block would be preferable to any other options that may be put forth.³⁵

Additionally, consistent with its comments in the incentive auction proceeding, CCA agrees that 5 MHz blocks are appropriate.³⁶ That block size will maximize the number of licensed blocks in an area and will enable wireless carriers to provide mobile broadband services.³⁷ Creating 5 MHz blocks comports with current industry practices and with the block sizes used in other bands.³⁸

B. License Areas No Larger Than Economic Areas Strike the Right Balance Between Scale Economies and Competitive Opportunities

As CCA noted in 2004, the size of the geographic areas to be licensed in the H Block is among the most important issues to small and rural wireless carriers in this proceeding.³⁹

Licensing this spectrum by geographic areas that are too large in size could discourage participation in any auction the Commission conducts for the H Block and would give significant

³³ See *Incentive Auction NPRM* ¶¶ 127-128; see also, Amendment of Parts 1, 21, 73, 74, and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, WT Docket No. 03-66, *Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order*, 21 FCC Rcd 5606, 5720 ¶ 278 (2006).

³⁴ *Id.*

³⁵ *Notice* ¶ 23.

³⁶ CCA Incentive Auction Comments at 12.

³⁷ *Id.*

³⁸ *Id.*

³⁹ See Comments of Rural Cellular Association, WT Docket No. 04-356 at 2 (filed Dec. 8, 2004).

and unwarranted advantages to the largest nationwide carriers at the expense of smaller carriers.⁴⁰ Using sufficiently small geographic areas will provide rural and regional carriers incentives to participate while still allowing carriers to aggregate blocks to serve larger geographic areas. To prevent providing unfair advantages to the largest carriers and incent smaller carriers to participate, the Commission should adopt its proposal and license the H Block in smaller geographic areas no larger than EAs. Licensing the spectrum in this manner would:

- Accommodate the types of wireless services that are likely to be deployed in the H Block;⁴¹
- Remain consistent with the licensing approach adopted by the Commission for other commercial wireless services, including AWS-1, Broadband PCS, the Commercial 700 MHz bands, and the AWS-4 band⁴² (and will likely be adopted in the reallocated 600 MHz band⁴³);
- Give rural and regional carriers reasonable opportunities to bid;⁴⁴
- Increase the number of potential bidders for licenses, increasing potential auction revenue;⁴⁵
- Provide licensees with more flexibility to respond to market demand, which improves the efficiency of spectrum usage;⁴⁶
- Allow licensees to benefit from economies of scale;⁴⁷ and
- Reduce administrative and transaction costs by obviating the need for site-by-site licensing.⁴⁸

Additionally, because the bands adjacent to the H Block (PCS and AWS-4) are both licensed on an EA basis, licensing the H Block spectrum in blocks no larger than EAs would streamline the

⁴⁰ *Id.*; CCA Incentive Auction Comments at 14.

⁴¹ *Notice* ¶ 26.

⁴² *Id.*

⁴³ *See Incentive Auction NPRM* ¶¶ 144-150.

⁴⁴ CCA Incentive Auction Comments at 14-15.

⁴⁵ *Id.*

⁴⁶ *Notice* ¶ 26.

⁴⁷ *Id.*

⁴⁸ *Id.*

development of wireless services in the H Block and create additional synergies in infrastructure deployment. Licensing the H Block in smaller geographic areas no larger than EAs can help promote competition and innovation from smaller, mid-sized, and rural operators, while still allowing larger carriers the opportunity to achieve reasonable economies of scale.

V. THE COMMISSION'S PROPOSED COST-SHARING RULES ARE TRANSPARENT AND FAIR

The Commission has sought comment on its proposed formula for reimbursing UTAM, Inc. (UTAM) for the costs incurred in relocating unlicensed PCS (UPCS) from the 1915-1920 MHz band and for reimbursing Sprint Nextel Corporation (Sprint) for the cost incurred in relocating broadcast auxiliary service (BAS) licensees from the 1995-2000 MHz band. The Commission's proposals would require H Block licensees to pay a *pro rata* amount of the reimbursements owed to UTAM and Sprint based on the gross winning bids of the initial auction within 30 days of the grant of their long-form license application.⁴⁹ The Commission's proposed reimbursement model has many benefits.

First, the proposed reimbursement model is fair to auction participants. Because licenses in urban markets will most likely sell for more than licenses in rural markets, the proposed cost-sharing formulas would place a proportionately greater relocation cost burden on licensees that acquire spectrum in urban markets, where UTAM and Sprint likely incurred higher costs to remove incumbent BAS and UPCS operations. In contrast, applicants that acquire licenses in rural markets, in which fewer BAS and UPCS facilities were relocated, would bear a proportionately smaller relocation burden, but one still commensurate with the amount they are willing to pay for the spectrum.

⁴⁹ Notice ¶¶ 58, 64.

Second, the proposed reimbursement model is clear to prospective bidders for H Block spectrum. All prospective H Block licensees will know the cost-recovery framework at the outset of the auction and can develop a reasonable expectation of their reimbursement obligations. While an individual bidder's reimbursement obligation may vary somewhat during the course of bidding, the precise amount of reimbursement liability is readily calculable at the end of each bidding round and, as a practical matter, seems likely to correspond fairly closely to the share of the total auctioned MHz-POPs that a bidder acquires during the auction.⁵⁰ Despite some potential for variability, bidders are unlikely to assume liability wholly out of proportion to the bids they place on the available spectrum licenses. Likewise, the proposed reimbursement model would provide much needed finality and certainty to the H Block.

Finally, regarding the Commission's alternative proposal, in which bidders' reimbursement obligations would depend on the total population of their respective license areas (as opposed to their share of gross bids), it is CCA's position that trying to carve out the benefits of relocation strictly on the basis of population would ignore the diffuse, nationwide benefits of the relocation process. Moreover, and unlike the revenue-based model, a population-based approach would unreasonably delay UTAM's and Sprint's receipt of cost recovery payments. Additional delay seems especially unwarranted in this case given the substantial amount of time that has already passed since those parties incurred the costs required to clear incumbents from the H Block.⁵¹

Adopting a revenue-based formula for BAS and UPCS relocation cost-recovery represents a simple, practical means of recognizing the extensive benefits these relocation programs have had

⁵⁰ See Notice ¶¶ 61, 67. The amount necessary to cover relocation expenses seems unlikely to discourage bidding since the reimbursement obligation represents a small fraction of the value the H Block spectrum will likely command as a result of competitive bidding.

⁵¹ *Id.* ¶¶ 60-61, 67-68.

and will help ensure timely repayment of the substantial obligation that the relocating parties incurred for the benefit of all licensees in the band.

VI. CONCLUSION

CCA supports the Commission's proposals to implement the Spectrum Act's directive to license the H Block for competitive use. Together with other proceedings that are currently pending, the Commission's actions in this docket can yield substantial benefits for consumers and wireless carriers alike, and spur the proliferation of more robust and competitive wireless broadband services.

Respectfully submitted,

/s/ Rebecca Murphy Thompson

Steven K. Berry
Rebecca Murphy Thompson
COMPETITIVE CARRIERS ASSOCIATION
805 15th Street NW, Suite 401
Washington, DC 20005

February 6, 2013